

DOCUMENT RESUME

08138 - [C3426549]

[Protest That Auctioneer Failed To Acknowledge Bid]. B-192984.
December 5, 1978. 3 pp.

Decision re: Leroy D. Marquardt; by Robert F. Keller, Deputy
Comptroller General.

Contact: Office of the General Counsel; Procurement Law I.
Organization Concerned: Department of Defense; Defense Property
Disposal Service.

Authority: 37 Comp. Gen. 520. B-149620 (1962). B-189942 (1978).

An individual protested the auction sale of a used
hoxcar to another bidder, contending that the auctioneer did not
acknowledge his bid and "knocked down" the item for another
bidder. The auctioneer had "knocked down" the sale to the other
bidder before the protester's bid was brought to his attention.
Award to the other bidder was a proper exercise of the
auctioneer's discretion under provisions of the invitation for
bids. (RRS)

DECISION

P. J. J. J.
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

A. I.
8549

FILE: B-192984

DATE: December 5, 1978

MATTER OF: Leroy D. Marquardt

DIGEST:

Protest that Government auctioneer was careless in failing to recognize and accept protester's bid during auction sale of Government property is denied. Record shows that auctioneer had "knocked down" sale to another bidder before protester's bid was called to auctioneer's attention. Under provisions of IFB, award was made at time of "knocking down" sale to other bidder. Auctioneer properly exercised his discretion and refused to accept protester's bid.

Mr. Leroy D. Marquardt protests the auction sale of a used boxcar to another bidder by the Defense Property Disposal Service (DPDS) pursuant to invitation for bids (IFB) No. 41-8353. The auction sale of Government property was conducted at the Community Center, Naval Weapons Center, China Lake, California, on July 20, 1978.

Mr. Marquardt contends that he attempted to bid on item No. 168, a used boxcar, but that the auctioneer did not acknowledge his bid and "knocked down" the item to a different bidder for \$50. Mr. Marquardt alleges that he tried to get the auctioneer's attention as the auctioneer was finalizing the sale. When the auction recorder called the auctioneer's attention to Mr. Marquardt, the auctioneer replied that it was too late since the sale to the other bidder was already final. When item No. 169, a second used boxcar, was put up for sale, Mr. Marquardt bid and he was recognized by the auctioneer. Mr. Marquardt was awarded this sale, but at the higher price of \$575. Mr. Marquardt contends that the auctioneer was careless and did not get the best price for the Government on item No. 168. He argues that both boxcars should be auctioned again in the interest of fairness to all bidders, and points out that other items, specifically items No. 158 and No. 160, were

withdrawn from sale by the auctioneer because of the unreasonable low bids received. The protester also alleges that it might be possible to establish a case of fraud based on the auctioneer's actions.

The protester filed a protest with the DPDS on July 24, 1978, supported by statements from two witnesses which indicated that those witnesses saw Mr. Marquardt's attempt to bid on item No. 168. The Defense Logistics Agency (DLA) investigated the matter and concluded that, since the auditorium was poorly lighted and Mr. Marquardt was near the rear of the auditorium, the auctioneer simply did not see Mr. Marquardt's attempted bid. The auctioneer submitted a statement indicating that he did not favor any bidder and honestly did not see Mr. Marquardt's attempted bid. On September 12, 1978, DLA concluded that no preferential treatment had been exercised by the auctioneer and that no reduction in price would be made to Mr. Marquardt on item No. 169.

Generally, a sale by auction is complete when the auctioneer announces its completion, and title to the subject matter of the sale passes to the successful bidder at that time unless the parties intend to the contrary. E-149620, October 31, 1962. We have held that "an auctioneer is possessed of a large measure of discretion in the conduct of the sale" and that it is within the auctioneer's authority to determine whether or not all bids have been received. 37 Comp. Gen. 520 (1958).

In this case, the IFB provided in the section entitled "SPECIAL LOCAL AUCTION CONDITIONS," under "ARTICLE DA: SUBMISSION OF BIDS AND AWARDS," that:

"(3) The Auctioneer's 'knocking down' an item will constitute an award by the Contracting Officer to the successful Purchaser for each item except as otherwise herein specifically provided."

The IFB also provided in paragraph 20 of the section entitled "ADDITIONAL GENERAL INFORMATION AND INSTRUCTIONS" that, "The Contracting Officer's announcement of the acceptable bid will constitute an award." Based upon such provisions a valid and binding contract was formed

on item No. 168 when it was knocked down to the other bidder. The auctioneer properly exercised his discretion and concluded that all bids were in, "knocked down" the award to a bidder other than Mr. Marquardt, and refused to accept Mr. Marquardt's attempted bid.

Regarding Mr. Marquardt's contention that the first boxcar (item No. 168) should have been withdrawn from sale as items Nos. 158 and 160 had been when a bid of only \$50 was received, we do not find the auctioneer's actions to have been unreasonable. First, the agency report indicates that the guideline price for the sale of the boxcars was between \$50 and \$100. Second, items Nos. 158 and 160 had not been "knocked down" to any bidder when they were withdrawn, whereas the first boxcar (item No. 168) had already been "knocked down" for sale at \$50 before the auctioneer could possibly have become aware that the second boxcar (item No. 169) would sell for \$575. Award of item No. 168 was made and the sale finalized at a price of \$50 when it was "knocked down." Accordingly, item No. 168 could not properly have been withdrawn from sale at that time.

Concerning Mr. Marquardt's allegation that the auctioneer's actions may have been fraudulent, no evidence of fraud has been presented by the protester and none is revealed by the record. The protester has the burden of affirmatively proving his case. Fein-Marquardt Associates, Inc., B-189942, February 1, 1978, 78-1 CPD 93. Mr. Marquardt has not carried this burden in the present case.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States